

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 19-C- 2/

Plaintiff(s)

Judge: O'briant

Persinger & Associates, Inc.

vs.

Days to
Answer

Type of Service

Defendant(s)

30

Personal

Logan County Board of Education

Name

506 Holley Avenue

Street Address

Logan, West Virginia 25601

City, State, Zip Code

II. TYPE OF CASE:

☒ General Civil

☐ Mass Litigation [As defined in T.C.R. 26.04(a)]

☐ Asbestos

☐ FELA Asbestos

☐ Other: _____

☐ Habeas Corpus/Other Extraordinary Writ

☐ Other: _____

☐ Adoption

☐ Administrative Agency Appeal

☐ Civil Appeal from Magistrate Court

☐ Miscellaneous Civil Petition

☐ Mental Hygiene

☐ Guardianship

☐ Medical Malpractice

III. JURY DEMAND: ☒ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year): 01 / 2020

IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?

☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities

☐ Reader or other auxiliary aid for the visually impaired

☐ Interpreter or other auxiliary aid for the deaf and hard of hearing

☐ Spokesperson or other auxiliary aid for the speech impaired

☐ Foreign language interpreter-specify language: _____

☐ Other: _____

Attorney Name: Charles M. Johnstone, II

Firm: Johnstone & Gabhart, LLP

Address: PO Box 313 Charleston, WV 25321

Telephone: (304) 343-7100

Representing:

☒ Plaintiff

☐ Defendant

☐ Cross-Defendant

☐ Cross-Complainant

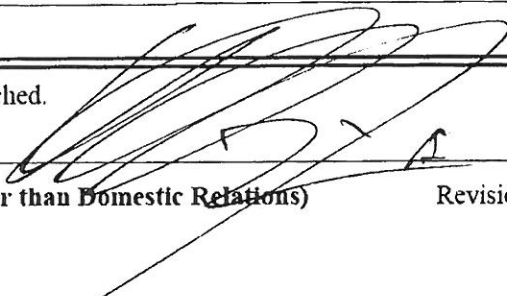
☐ 3rd-Party Plaintiff

☐ 3rd-Party Defendant

☐ Proceeding Without an Attorney

Original and 1 copies of complaint enclosed/attached.

Dated: 02 / 07 / 2019

Signature: 

Plaintiff: Persginger & Associates, Inc., et al

Case Number: 19-C-

vs.

Defendant: Logan County Board of Education, et al

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

Williamson Shriver Architects, Inc.

Defendant's Name

717 Bigley Avenue

Street Address

Charleston, West Virginia 25302

City, State, Zip Code

Days to Answer: 30

Type of Service: Secretary of State

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

PERSINGER & ASSOCIATES, INC.
a West Virginia Corporation,

Plaintiff,

v.

Civil Action No.: 19-C-21
Judge: O'briant

LOGAN COUNTY BOARD OF EDUCATION, and
WILLIAMSON SHRIVER ARCHITECTS, INC.
a West Virginia Corporation

Defendants.

VERIFIED COMPLAINT

COMES NOW the Plaintiff, Persinger & Associates, Inc., by counsel, Charles M. Johnstone, II, and the law firm of Johnstone & Gabhart, LLP, and for its Complaint against Defendants, Logan County Board of Education and Williamson Shriver Architects, Inc., states as follows:

1. Plaintiff, Persinger & Associates, Inc. ("Persinger") is a corporation duly organized and licensed to do business under the laws of the State of West Virginia, with its principal office located at 1509 Hansford Street, Charleston, Kanawha County, West Virginia 26311.

2. Defendant, Logan County Board of Education, ("Logan") is a County Board of Education established in accord with West Virginia Code 18-5-1 et seq, with its principal place of business located at 506 Holly Avenue, Logan, Logan County, West Virginia 25601.

3. Defendant, Williamson Shriver Architects, Inc. ("Williamson Shriver"), is a corporation existing under the laws of the State of West Virginia, with its principal office located at 717 Bigley Avenue, Charleston, Kanawha County, West Virginia 25302.

4. This Court has jurisdiction over the parties and the subject matter of this action because, among other things, the project and events giving rise to this claim took place in Logan County and the breaches and negligent acts occurred in Logan County.

FACTUAL BACKGROUND

5. Prior to April 18, 2017, Logan accepted bids for a "New Chapmanville Intermediate School" (also referred to herein as "the Project"). The Project was bid and constructed under multiple prime trade contracts with bids being submitted on the following bid items:

- a. 1 General Trades
- b. 2 Roofing
- c. 3 Windows
- d. 4 Food Service Equipment
- e. 5 Fire Protection
- f. 6 Plumbing
- g. 7 HVAC
- h. 8 Electrical
- i. 9 Testing, Adjusting and Balancing
- j. 10 HVAC Controls
- k. 11 General Construction Contractor (See below)
- l. 12 HVAC/Plumbing/Electrical Contractor
- m. 13 HVAC/Plumbing Contractor
- n. 14A Classroom Furnishings
- o. 14B Metal Case Goods & Seating
- p. 14C Metal Shelving
- q. 14D Mobile Folding Tables
- r. 14E Loose Furnishings Combination

6. The project was designed by the Defendant, Williamson Shriver. Further, upon information and belief, by contract, Defendant, Williamson Shriver, was to act as an authorized representative for Logan with regard to decisions involving, among other things, scheduling, payments and requests for modifications, time extensions and additional compensation.

7. As part of the solicitation, the Defendants provided bidders, including Persinger, with Williamson Shriver's design and contract documents, including plans, specifications, bid documents and other contract documents prepared by Williamson Shriver. The information provided to prospective bidders, including Persinger, was intended to provide a road map for contractors to be able to reasonably anticipate conditions and to be able to prepare bids for construction of the project.

8. By separate contract, Logan contracted with PCS & Manage, LLC to perform construction management for the project which duties included, but were not limited to, scheduling, coordination, onsite observation, progress meetings, pay application review and approval, RFI's and reviewing and evaluating multiple prime trade contractors' pay applications and change order requests.

9. Upon information and belief, at all relevant times, the President of the Logan County Board of Education was also employed as a lobbyist for the West Virginia Contractor's Association and, as such, was actively working to have PCS & Manage, LLC terminated from the Logan Project as well as all other statewide school projects being constructed through the school building authority.

10. In specific reliance upon all of the information provided by the Defendants including the express representation that the project would have a construction manager, Persinger submitted a bid for the General Trades Multiple Prime Trade Contract in the amount of \$5,682,100.00.

11. Persinger's bid was determined to be the lowest, responsible, responsive bid for the General Trades package and therefore, it was awarded the Contract. A Contract was entered into by and between Persinger and Logan dated as of April 18, 2017.

12. The contract time commenced on or about May 8, 2017 and required that Substantial Completion be achieved within 364 calendar days making the required Substantial Completion date May 7, 2018.

13. Upon receipt of a Notice to Proceed, Persinger commenced construction. Unfortunately, almost immediately, there were problems with regard to scheduling and coordination that were the responsibility of the construction manager contracted by Logan. Again, the President of the Logan County Board of Education continued efforts to have the construction manager terminated. Upon information and belief, Logan had a plan to terminate the construction manager with the intention that public monies that would have gone to pay the construction manager would ultimately benefit Logan directly.

14. Ultimately, Logan, through its President, was successful in obtaining approval to terminate the contract of its construction manager, PCS & Manage, LLC, to the benefit of his lobbying client but to the detriment of the Project, and ultimately, the Board.

15. Without consideration for the multi-prime contracts it had entered into, including one with Persinger, Logan terminated its contract with the construction manager, PCS & Manage, LLC. Upon that termination, all of the responsibilities and duties contracted to be performed by PCS & Manage, LLC on the project were unassigned. Realizing timely completion of its New Chapmanville Intermediate School was now in jeopardy, Logan attempted to re-negotiate its contracts with the Plaintiff, Persinger and the Defendant, Williamson Shriver.

16. Meanwhile, during the time period while the Defendant Logan contemplated and ultimately terminated its construction manager contract with PCS & Manage, LLC, progress of the project was at a standstill.

17. Ultimately, in order to attempt to move the project forward, Persinger negotiated an amendment to its contract with Logan by which it assumed some of the responsibilities of the terminated construction manager. Persinger made such amendment upon the express understanding that both Defendants would also be assuming additional responsibilities relating to coordination, scheduling, observation, meetings, submittals, RFI's as well as review and approval of pay applications and change orders/additional compensation/time extension requests.

18. Unfortunately, despite express representations to the contrary, the Defendants failed to make consistent modifications to the contracts of the other multiple prime trade

contractors including advising that some of the obligations and responsibilities of the construction manager had been assigned to others, including Persinger. Further, despite express representations to the contrary, neither of the Defendants assumed any additional responsibilities that had been contracted to the construction manager.

19. Upon information and belief, Logan's decision to terminate its construction manager resulted in a windfall to it of over \$500,000.00 which funds were utilized to expand the Project.

20. Once construction on the Project recommenced, it became obvious that there was no uniform contractual procedure in place for scheduling, coordination, meetings, submittals, RFI's, pay application acceptance and review and claims for additional compensation or time extensions.

21. As a result, progress continued to fall behind schedule. As a result of the problems with no construction manager, multiple prime trade contractors did not submit required input to schedules nor did they attend required meetings. Persinger was the only multiple prime trade contractor consistently attending meetings and performing duties required by the contracts.

22. Persinger immediately and constantly notified both Defendants of the substantial problems with coordination and scheduling but no action was ever taken by either of the Defendants.

23. Despite express representations to the contrary, upon information and belief, neither of the Defendants assumed any additional obligations or responsibilities from the terminated contract with the construction manager, PCS & Manage, LLC. As a result, the majority of those duties, obligations and responsibilities were not performed by any entity. All of the issues and reasons for the lack of progress and delay on the construction of the Project were the responsibility of and within the sole control of the Defendants. Despite this fact, and despite their knowledge that the Project was being delayed, the Defendants failed to recommend or approve any extensions of time related to termination of the construction manager.

24. When the project fell behind the schedule, the Defendants forwarded notices to Persinger expressly indicating that it was Persinger who was behind schedule and further requiring Persinger to accelerate its performance in order to finish its work timely. Importantly, despite the fact that all the multiple prime trade contractors were also behind schedule, none of them received any notice of deficiency or demand to accelerate.

25. Despite the fact that it was not the fault of Persinger that the project fell behind schedule and despite the fact that it was actually the Defendants who had failed to perform modified duties after termination the contract manager at the direction of the Defendants, in order to attempt to complete the project prior to the beginning of the new school year, Persinger substantially accelerated its work schedule by adding additional labor, including the owner of the company, and working seven days a week.

26. Utilizing extraordinary effort at a substantial additional cost, Persinger was able to substantially complete its scope of work even prior to the Defendants' deadline. On the other hand, other multiple prime trades contracts, including the roofing contractor, remained incomplete and, as a result, further delayed the Project attaining substantial completion.

27. Despite Persinger's work having been substantially completed, the Defendants would not recognize the work as substantially completed and have unfairly blamed Persinger solely for Defendant Logan's decision to not open the new school at the beginning of the 2018-2019 school year. The Defendants have recommended and have assessed liquidated and other damages against Persinger with absolutely no factual or legal or other basis to do so.

28. At all times during the delayed progress of the Project, Persinger notified the Defendants of its claim for an extension of time and for substantial additional costs it was incurring as a direct and proximate result of the acts, omissions and breaches of the Defendants.

29. Further, the Defendants, by their presence on the project site, had actual knowledge of all of the events giving rise to the claim of Persinger.

30. When the amount of the claim related to increased labor resulting from the Defendants' acts, omissions or breaches was able to be calculated, Persinger submitted a claim in

the amount of \$329,133.45. In violation of the contract and other duties owed to Persinger, the claim was summarily rejected without review.

31. Despite full and complete compliance of all of its contractual and other obligations, the Defendants have failed to recommend and have failed to pay to Persinger the undisputed contract sum of \$294,649.51.

32. When its claim of its undisputed contract balance plus its claim were wrongfully rejected, in accord with its contract, Persinger demanded mediation. In clear breach of the written agreement Defendant Logan has wrongfully refused to mediate indicating that its improper denials of Persinger's claims for payment would not be reversed.

COUNT I: BREACH OF CONTRACT AGAINST DEFENDANT,
LOGAN COUNTY BOARD OF EDUCATION

33. Persinger restates and re-alleges each and every allegation set forth in paragraphs 1 through 32 of its Complaint as if the same were fully set forth herein.

34. Persinger has fully and faithfully performed all of its obligations under its Contract with Logan.

35. At stated above, during the course of the project, Persinger incurred substantial additional and extra costs, delays and disruptions as a result of the following, breaches by Logan of its contractual duties:

- a. Termination of its construction manager without proper consideration for its adverse effect on existing multiple prime trade contracts;
- b. Failing to properly apportion and pay for assumption by others, including Persinger, of responsibilities and duties of its terminated construction manager;
- c. Failing and refusing to properly manage, coordinate and schedule the work of the multiple prime trade contractors, including Persinger;
- d. Singling out Persinger for sole blame for delays in completion of the Project and improperly directing Persinger to accelerate its performance; and

- e. Failing to compensate Persinger for its additional labor and acceleration costs necessitated by the express directives of the Defendants.

36. Logan breached its contractual and other obligations owed to Persinger, among other things, failing and refusing to pay Persinger for the original contract amount plus its extra costs for the delays and disruptions and other compensable damages.

37. Specifically, Logan is in material breach of its Contract and other duties owed to Persinger as a result of, but not limited to, the following:

- a. Logan has failed and refused to pay Persinger for work performed pursuant to the contract;
- b. Logan has dictated and changed the manner and method of performance contemplated by Persinger when it submitted its bid;
- c. Logan has delayed, disrupted and otherwise interfered with Persinger's ability to perform its contractual obligations;
- d. Logan has failed and refused to pay to Persinger additional amounts for labor and other charges necessitated by its acts and omissions including requiring Persinger to accelerate its work; and
- e. Logan has failed and refused to properly evaluate recommend and pay legitimate claims of Persinger.

38. Logan had contemporaneous actual notice of each claim of Persinger and further was provided notice in accord with the Contract and/or the course of dealing by and among Persinger and Williamson Shriver. To the extent that any alleged notice provision set forth in the written contract was not strictly complied with, such term of the Contract was waived by Logan's actions or inactions.

39. As a direct, proximate and foreseeable result of the Logan's material breach of Contract and breach of other duties owed to Persinger, Persinger has suffered a substantial financial loss, extra costs and delay resulting from loss of productivity and efficiency, extended

overhead, changed manner and method of performance and changed sequence of work, lost profits and lost business opportunities.

**COUNT II: NEGLIGENCE AGAINST DEFENDANT, WILLIAMSON SHRIVER
ARCHITECTS, INC.**

40. Logan restates and re-alleges each and every allegation set forth in paragraph 1 through 39 of its Complaint as if the same were fully set forth herein.

41. In its capacity as the design and project engineer for the Project and the owner's representative on the Project, Williamson Shriver owed a duty of care to Persinger to render its services including, but not limited to, design, preparation of drawings, specifications and contract documents, as well as project administration, recommending and approving payments and change order requests with the ordinary skill, care and diligence commensurate with that rendered by members of its profession in the same or similar circumstances.

42. The Defendant, Williamson Shriver was negligent and breached duties owed to Persinger by, among other things, the following:

- a. Failing to assure that contract documents were uniform in modification after the termination by Logan of its construction manager;
- b. Failing to provide and/or see to it that proper scheduling and coordination was accomplished for the project following the firing by Logan of its construction manager.
- c. Failing to approve payment to Persinger for amounts due and owing including both the original contract amount and claims for additional compensation.
- d. Failing to certify both substantial and final completion of the work of Persinger in accord with its contractual obligations
- e. Failing to timely and properly consider, approve and process change orders for extra and additional work performed by Persinger at the direction of the Defendants, Logan and Williamson Shriver;

f. Failing to properly administer the Contract as the Defendant's representative on the Project; and

43. The Defendant, Williamson Shriver's actions or inactions constitute negligence and a failure to render services with the ordinary skill, care and diligence commensurate with members of the engineering profession under similar circumstances.


44. As a direct, proximate and foreseeable result of Williamson Shriver's breach of duties owed to Persinger and Williamson Shriver's unjust enrichment, Persinger has suffered a substantial financial loss, extra costs and delay resulting from loss of productivity and efficiency, extended overhead, changed manner and method of performance and changed sequence of work, lost profits and lost business opportunities.

WHEREFORE, the Plaintiff, Persinger & Associates, Inc., demands judgment against the Defendants, Logan County Board of Education and Williamson Shriver Architects, Inc. jointly and severally, for the additional work performed by Persinger in the amount of \$623,782.96 an amount that will fully and fairly compensate Persinger as a result of the acts and omissions of the Defendants.

PERSINGER & ASSOCIATES, INC. DEMANDS A TRIAL BY JURY.

Respectfully submitted,

PERSINGER & ASSOCIATES, INC.
By Counsel:



Charles M. Johnstone, II, Esq. (WVSB #5082)
JOHNSTONE & GABHART, LLP
Post Office Box 313
Charleston, West Virginia 25321
Tel: (304) 343-7100
Fax: (304) 343-7107
Counsel for Plaintiff

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IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

PERSINGER & ASSOCIATES, INC.
a West Virginia Corporation,

Plaintiff,

v.

Civil Action No.: _____

Judge: _____

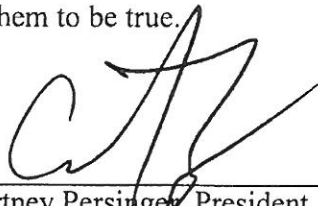
LOGAN COUNTY BOARD OF EDUCATION, and
WILLIAMSON SHRIVER ARCHITECTS, INC.
a West Virginia Corporation

Defendants.

VERIFICATION

STATE OF West Virginia,
COUNTY OF Kanawha, to-wit:

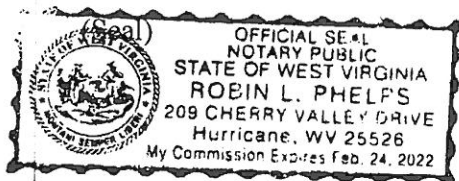
I, Courtney Persinger, President of Persinger and Associates, named in the foregoing "VERIFIED COMPLAINT", after being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, he believes them to be true.




Courtney Persinger, President
Persinger & Associates, Inc.

Taken, subscribed and sworn to before me this 8th day of February, 2019.

My commission expires February 24, 2022.





Notary Public